

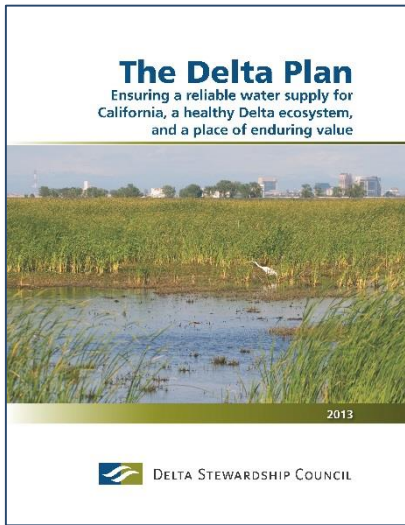
Public Hearing Regarding Proposed Rulemaking for Delta Plan Policy G P1(b)(2)

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The Delta Plan

An enforceable, comprehensive, and long-term management plan for the Sacramento-San Joaquin Delta

- Delta Reform Act of 2009
 - Coequal Goals – Water Code section 85054
 - Delta Plan – Water Code section 85300
 - Covered Actions – Water Code section 85057.5
 - Certification of Consistency – Water Code section 85225

Current Delta Plan Provisions and Regulations

- Policy **G P1(b)(2)** requires that for covered actions not exempt from CEQA, a certification of consistency must include:

“applicable feasible mitigation measures identified in the Delta Plan’s Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.”

- This policy is codified in California Code of Regulations, title 23, section 5002, subdivision (b)(2)
- Section 5002(b)(2) currently refers to mitigation measures identified in the Delta Plan’s 2013 Program EIR

Current Delta Plan Provisions and Regulations

- Council adopted Delta Plan and certified original Delta Plan Program Environmental Impact Report (PEIR) in May 2013
- Council adopted Delta Plan Amendments and certified PEIR for the Delta Plan Amendments on April 26, 2018



April 2018 Council Meeting

Current Delta Plan Provisions and Regulations

- Council adopted Resolution 2018-1, which in part:
 - Certified the Final Delta Plan Amendments PEIR
 - Adopted and incorporated new mitigation measures identified in the PEIR into the Delta Plan
 - Adopted the Delta Plan Amendments Mitigation Monitoring and Reporting Program
 - Adopted the Delta Plan Amendments
 - Directed the Executive Officer to initiate rulemaking to amend Delta Plan Policy **G P1(b)(2)**

Proposed Amendment

- Proposed regulatory amendment to 23 CCR section 5002(b)(2) is as follows:

5002. Detailed Findings to Establish Consistency with the Delta Plan.

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(b) Certifications of consistency must include detailed findings that address each of the following requirements:

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(2) Covered actions not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 ~~identified in the Delta Plan's Program EIR~~ (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.

OAL Rulemaking Process

- Notice of Proposed Adoption
 - Filed and published in California Regulatory Notice Register on November 30, 2018
 - Began 45-day public review period
 - Public review period concluded January 14, 2019
- One written public comment received from Department of Water Resources

Comments and Responses

- **Comment:** Can benefits and effects of future modifications and/or additions be fairly assessed given limited current information?
- **Comment:** Amendment could increase public agencies' implementation costs of potential Delta Plan covered actions given additional future mitigation measures
- **Response:** Nonsubstantive modification to clarify that proposed regulation applies only to mitigation measures adopted and incorporated into the Delta Plan *as amended April 26, 2018*
 - With this modification, proposed regulation would not increase implementation costs of covered actions that would be required to incorporate and/or implement new mitigation measures in the future

CEQA Compliance

- Council staff has determined that the proposed regulation is **exempt** from CEQA under the general rule or *common sense* exemption
 - “... CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA”. (14 CCR section 15061(b)(3))
- The proposed amendment is necessary to ensure compliance with CEQA
 - Clarifies that all applicable feasible mitigation measures adopted and incorporated into the Delta Plan apply to covered actions
- Proposed amendment would not create any change in existing physical conditions and thus would not have a significant effect on the environment

Supporting Documents

Attachment 1

Final Proposed Regulation Language

Attachment 2

Draft Final Statement of Reasons (FSOR)

Attachment 3

Draft STD Form 399 Economic and Fiscal Impact Statement

Attachment 4

Statement of Exemption

Attachment 5

Draft Resolution 2019-01

Attachment 6

Initial Statement of Reasons

Attachment 7

Comment Letter (Department of Water Resources)

Staff Recommendation

- Following a public hearing, **adopt Resolution 2019-01**, which would
 - 1) Determine that the proposed amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3);
 - 2) Approve the proposed amendment to 23 CCR section 5002(b)(2);
 - 3) Direct the Executive Officer to incorporate any non-substantive, technical changes identified at today's meeting, and other changes identified subsequent to that meeting;
 - 4) Direct the Executive Officer to finalize all elements of the rulemaking package and submit it to the OAL once complete; and
 - 5) Grant the Executive Officer discretion to make changes required by OAL in order to comply with requirements of the California Administrative Procedure Act, and to inform the Council of any such changes.

Questions and Discussion